IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY FIRST DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

**THE HON'BLE MR JUSTICE P.S.NARAYANA**

**WRIT PETITION NO : 2192 of 1997**

Between:

**1 Ahmed Bin Abood S/o. Abood Bin Mubarak**
**R/o. New Town, Hyderabad Rd.,**
**Mahabubnagar.**
**2 Gulam Rasool S/o. Shaik Baley**
**R/o. Motinagar, Mahabubnagar.**
**3 Mohd. Moulana S/o. Osman Ali**
**R/o. Fire Station Naka Kosgi Rd.,**
**Mahabubnagar.**

..... PETITIONERS

**AND**

**The Commissioner, Mahabubnagar Municipality**
**Mahabubnagar.**

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction, preferably in the nature of a writ of mandamus directing the respondent herein not to bring the residential houses of the petitioners items No.22, 23 and 24 for auction sale, declaring the auction proceedings dt. 20-1-1997 by virtue of the Resolution No. 227, dated 20-1-97 in File No. G1/72/97 in respect of the residential houses of the petitioners items No.22, 23 and 24 situated within the Municipal limits of Mahabubnagar Town as illegal, arbitrary, viod and without jurisdiction.

**Counsel for the Petitioner:MR.K.Govardhan Reddy**

**Counsel for the Respondent : MR.Polisetti Radhakrishna, Standing**
**Counsel for respondent/Municipality**

The Court made the following :

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**ORDER:**

Heard Sri Govardhan Reddy, Counsel for the writ petitioners and Sri Polisettyi Radhakrishna, Standing Counsel for the respondent/Municipality.

The only question which had been argued in elaboration by the Counsel for the writ petitioners is that the respondent/Municipality cannot proceed with the proposed auction of the houses in question especially in view of the fact that G.O.Ms.No.419, Municipal Administration, dated 13-8-1996 would cover the vacant lands or the sites and would not cover the buildings. The learned Counsel also in the alternative had drawn the attention of this Court to Rule 4 of the Acquisition and Transfer of Immovable properties Rules 1967 and would contend that even in view of the said Rule, the proposed auction cannot be further proceeded with.

On the contrary, Sri Polisetti Radhakrishna, the learned Standing Counsel for the respondent-Municipality would contend that inasmuch as the proceedings were taken in pursuance of the resolution, the Municipality is having the power to make such alienations.

Heard both the Counsel.

The Writ Petition is filed for a writ of mandamus directing the respondent not to bring the residential houses of the petitioners item Nos.22, 23 and 24 for auction sale, declaring the auction proceedings dated 20-1-1997 by virtue of Resolution No.227, dated 20-1-1997 in File No.G1/72/97 in respect of the residential houses of the petitioners item Nos.22, 23 and 24 situate within the Municipal limits of Mahabubnagar town as illegal, arbitrary, void and without jurisdiction and to pass such other suitable orders.

The petitioners are the residents of Municipal Naka Houses leased out by the respondent-Municipality and had been continuing as tenants in the above said premises paying the lease amount regularly. It is further averred that in pursuance of G.O.Ms.No.419, Municipal Administration, dated 13-8-1996 which authorizes sale of open waste lands within the Municipal limits by open auction, the Government had constituted a Committee headed by Joint Collector and the members, Regional Joint Collector of Municipal Administration and the Regional Joint Director of Town Planning and the Municipal Commissioner of the concerned Municipality. The said G.O. was issued making it applicable to all the Municipalities through out the State of Andhra Pradesh. It is further averred that the Mahabubnagar Municipality represented by the respondent totally misusing the said G.O. and the authorization made thereunder,

enumerated and identified residential houses, Municipal Parks, lay out open places and Municipal buildings and Toll tax nakas are also included as if they are open lands enumerated and identified as properties brought to sale in pursuance of the said G.O. It is further averred that the respondent-Municipality enumerated and identified 33 properties out of which items Nos. 1, 31 and 33 were exempted and deleted by virtue of Municipal Resolution No.227 dated 20-1-1997 in File No.G1/72/97 and thereby notified properties to be brought to auction sale treating them as vacant lands and also the resolution further directed that a Sub-Committee consisting of Chairman and other seven persons be appointed to further enumerate any properties left out in the town. Several other details relating to items of properties also had been mentioned. It was further averred that the petitioners are the tenants in relation to item Nos.22, 23 and 24, residential houses, belonging to respondent-Municipality, paying Municipal lease amount regularly for the last 25 to 30 years and these properties are not covered by G.O.Ms.No.419, Municipal Administration, dated 13-8-1996 and hence the proceedings of the respondent-Municipality dated 20-1-1997 and also the Resolution No.227, dated 20-1-1997 are questioned so far as they relate to these items of property.

On a careful reading of G.O.Ms.No.419, Municipal Administration, dated 13-8-1996, the said G.O. authorizes the alienation of lands

through public auction through tender-cum-auction procedure relating to the lands and the object appears to be that the Municipalities would derive some income out of the sale proceeds. Section 326 of the A.P. Municipalities Act 1965 deals with **Power of Government to make Rules** and Section 326(2)(c) specifies as hereunder :

> "In particular and without prejudice to the generality of the foregoing power they may make rules as to the conditions on which property may be acquired by the council or on which property vested in or belonging to the council may be transferred by sale, mortgage, lease, exchange or otherwise".

In exercise of the powers conferred under Section 326(2)(c) of the Act aforesaid by virtue of G.O.Ms.No.661, Municipal Administration, dated 27-10-1967 as amended by G.O.Ms.No.235, dated 6-6-1973, Rules relating to Acquisition and Transfer of Immovable properties by Municipal Councils had been framed. Rule 4 of the said Rules dealing with **Transfers otherwise than by lease of immovable property vesting to Municipal Council** reads as hereunder :

1. A municipal council shall not without the previous sanction of the Collector of the District, make or sanction may transfer except by way of lease, of any immovable property, belonging to it or create or sanction of the creation of any charge upon any such property if the value of the property so transferred or the amount for which the charge is so created exceeds Rs.10,000/- the previous sanction of the Government shall also be obtained for the transaction.

2. The deed of transfer of immovable property shall be in the appropriate form in Schedule II appended to these

rules with such variations as circumstances may require.

Apart from the fact that the G.O. referred to supra does not cover the residential houses belonging to the Municipality, even in the light of Rule 4 specified supra, the respondent cannot proceed with the proposed auction relating to those items unless Rule 4 also is complied with. In view of the facts and circumstances the impugned notification and also the Resolution relating to item Nos.22, 23 and 24 referred to above cannot be sustained and accordingly they are hereby quashed. However, it is made clear that the respondent-Municipality is at liberty to proceed further if so advised in accordance with the procedure as per the A.P. Municipalities Act, 1965 and the Rules made thereunder.

The Writ Petition is disposed of accordingly. No costs.

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P.S.Narayana.,J

Dt.21-12-2004

L.R. copy to be marked : YES / NO

AM

ASSISTANT REGISTRAR

To

One fair copy to the Hon'ble Sri Justice P.S.Narayana (for his Lordship's kind perusal)

1. The Commissioner, Mahabubnagar Municipality,

Mahabubnagar.

2. 2 C.Cs. to Standing Counsel for Mahabubnagar Municipality,

Mahabubnagar (OUT)

3. 8 L.R. copies

4. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.

5. The Secretary, A.P. Advocates Association Library, High Court Buildings, Hyderabad.

6. Two C.D. copies